

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 99-0142 GI
GROSS INCOME TAX

For Tax Periods: 1996 - 1997

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ISSUES

1. Gross Income Tax: Tax Rate

Authority: IC 6-2.1-2-4(4), IC 6-2.1-2-5(9), 45 IAC 1-1-13, 45 IAC 1-1-28

Taxpayer protests the application of the high rate to its gross income.

2. Tax Administration-Negligence Penalty

Authority: IC 6-8.1-10-2.1

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer operates an indoor go-kart center for individual and group events. Drivers at this center participate in professionally organized and supervised races. A gift shop and snack shop are located on the premises. Taxpayer offers three types of events. Open practice is an opportunity for individuals to come in and practice driving in ten-minute sessions. Open race events are offered at pre-determined times and individuals can race on a first come, first served basis. Taxpayer also offers group events when the karting center is open only to the members of a certain group that has reserved the entire facility and racing services. Taxpayer protested an assessment of gross income tax and the negligence penalty for the tax for the period 1996 and 1997. More facts will be provided as necessary.

1. Gross Income Tax-Tax Rate

Discussion

Taxpayer reported no gross income tax liability during the tax period since it listed its income under exempt interstate sales.

Taxpayer now contends that it receives its income from selling seat time in racing karts. Taxpayer contends that it owes gross income tax at the low rate because its income derived from “selling at retail” which is taxed at the low rate pursuant to IC 6-2.1-2-4 (4). To be considered income from “selling at retail”, the income must meet all of the following requirements of 45 IAC 1-1-13.

- (1) The sale is made by a “retail merchant.”
- (2) Ownership of tangible personal property is transferred conditionally or otherwise.
- (3) The sale is made in the ordinary course of the regularly conducted business of the transferor.
- (4) The sale is made either with or without the rendering of associated services.

Taxpayer’s sale of seat time in racing karts does not transfer the ownership of tangible personal property so it cannot be considered “selling at retail”. Therefore Taxpayer does not meet the requirements to have its income taxed at the lower rate.

IC 6-2.1-2-5 (9) imposes gross income tax at the higher rate on “any activity which is not described in section 4 of this chapter, including the provision of services of any character.” Taxpayer provides the service of allowing persons to participate in a sporting event, the racing of specialized go karts.

Finding

Taxpayer’s income from the racing events is taxable at the higher rate.

2. Tax Administration-Negligence Penalty

Taxpayer’s final point of protest concerns the imposition of the negligence penalty that was imposed pursuant to IC. 6-8.1-10-2.1(a) which states as follows:

If a person fails to . . . pay the full amount of tax shown on his return on or before the due date for the return or payment, incurs, upon examination by the department, a deficiency which is due to negligence,. . . the person is subject to a penalty.

Taxpayer contends that the information available to it at the time of the preparation of the tax returns seemed to indicate that all of Indianapolis was an enterprise zone and therefore the Gross Income Tax did not apply. Taxpayer’s misinterpretation of that

information, does not explain why it reported its income as exempt interstate income. Taxpayers have a duty to report their income accurately. The reporting of revenues from sales to Indiana residents from a facility in Indiana as interstate income breaches that duty and constitutes negligence.

Finding

Taxpayer's protest to the imposition of the negligence penalty is denied.

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